

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

JENNIFER VANDERSTOK *et al.*,

Plaintiffs,

v.

PAMELA BONDI, in her official capacity as
Attorney General of the United States *et al.*,

Defendants.

Case No. 4:22-cv-00691-O

**APPENDIX TO DEFENDANTS' BRIEF IN OPPOSITION TO DEFENSE
DISTRIBUTED'S MOTION FOR PRELIMINARY INJUNCTION**

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Case No. 4:22-cv-00691-O

DECLARATION OF JEREMY S.B. NEWMAN

I, JEREMY S.B. NEWMAN, declare as follows:

1. I am a Trial Attorney for the U.S. Department of Justice, Civil Division, Federal Programs Branch. I am counsel to Defendants in the above-captioned action. I make this declaration on the basis of personal knowledge.


2. On May 5, 2025, counsel for Defense Distributed, Chad Flores, contacted my colleague Daniel Riess and I concerning the next steps in this action and the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) treatment of various products sold by Defense Distributed. Over the next month, Mr. Riess and I corresponded with Mr. Flores regarding these issues.

3. On June 3, 2025, I sent a letter to Mr. Flores via electronic mail, attached as Exhibit 1.

4. Mr. Flores and I then engaged in additional correspondence, which Defense Distributed attached to a declaration it submitted in this case. *See* ECF No. 294-2, at 4-7.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 26, 2025.



Jeremy S.B. Newman

EXHIBIT 1



U.S. Department of Justice

Civil Division

Federal Programs Branch

Washington, D.C. 20005

June 3, 2025

VIA ELECTRONIC MAIL

Mr. Chad Flores
Flores Law PLLC
9117 Franklin Street Suite 600
Houston, Texas 77002

Re: *VanDerStok et al. v. Bondi et al.*, No. 4:22-cv-00691-O (N.D. Tex.)

Dear Mr. Flores:

My clients in the above-listed case understand that you have requested the views of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) as to whether the following items as advertised for sale on the website of your client Defense Distributed fall within the scope of Final Rule, Definition of “Frame or Receiver” and Identification of Firearms, 87 Fed. Reg. 24,652 (Apr. 26, 2022) (codified at 27 C.F.R pts. 447, 478, and 479) (“the rule”):

- AR-15 80% Lower Receiver – Forged and/or jigs sold therewith
- AK-47 80% Lower Receiver and/or jigs sold therewith
- AR-15 80% Lower Receiver and/or jigs sold therewith
- AR-308 80% Lower Receiver and/or jigs sold therewith

You have also asked whether the following items as advertised for sale on ghostgunner.net fall within the scope of the rule:

- CNC Machines
- Optic Cut
- 80% AR-15 Lower Receiver
- Starter Kits and Jig Sets
- “Zero percent”—with the exception of “GO Grip Module”
- “Materials”
- “Fixtures”
- “Accessories”
- “Tooling”
- “Spare parts”
- “Service and repairs”

You have also inquired whether the following item as advertised for sale on G80.com falls within the scope of the rule:

- G80 Jig Set

In response to your request, ATF has determined that these items do not fall within the scope of the rule. Accordingly, neither ATF nor any of the other defendants in the above-listed case will enforce the rule against Defense Distributed with respect to any of the listed items during the pendency of the above-referenced case.

Furthermore, ATF has agreed that if Defense Distributed provides ATF with a sample of the following items sold by Defense Distributed (including all materials sold with the respective items), ATF will expedite its review of these items and provide an expedited informal classification whether the items fall within the scope of the rule:

- GO Grip Module (as sold on ghostgunner.net)
- G80 Build Bundle (as sold on G80.com)
- G80 Unfinished Receiver (as sold on G80.com)
- G80 Grip Module (as sold on G80.com)

Sincerely yours,

/s/ Jeremy S.B. Newman

Trial Attorney
U.S. Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, N.W.
Washington, D.C. 20005

CHAPTER THREE

Public Economy: The Well-Ordered Market

So the markets are regulated.—Thomas M. Cooley

Public safety was a first-order concern of the well-regulated society to which all private rights and interests were subordinated. An examination of fire regulations thus goes far toward demystifying American private property. Property rights in the early nineteenth century were social, relative, and historical, not individual, absolute, and natural. A second aspect of American liberal mythology that stands in need of disenchantment concerns that mysterious and value-laden sociohistorical force known as “the market.” Polity and economy have a very special relationship. But despite being at the center of American historical research for over a century, basic assumptions about the American state and the market have remained surprisingly static. First, state regulation and market economics are seen as diametrical opposites. Regulation is a contrived and public interference in a field of invisible economic relations otherwise natural and private.¹ Second, American economic regulation is understood as a relatively recent invention. As Thomas McCraw argued in 1975 (perhaps with the Massachusetts Board of Railroad Commissioners in mind), “regulation is barely a century old.”²

This chapter takes aim at both of these assumptions. Through a historical reconstruction of nineteenth-century notions of *public* economy and the *well-ordered* market, it establishes the predominance in theory and practice of an approach to economic life in early America antithetical to the classical separation of market and state. The cases, statutes, and ordinances analyzed here

suggest that early Americans understood the economy as simply another part of their well-regulated society, intertwined with public safety, morals, health, and welfare and subject to the same kinds of legal controls. Far from viewing the state and the economy as adversarial, public economy was part of a worldview slow to separate public and private, government and society. It understood commerce, trade, and economics, like health and morals, as fundamentally public in nature, created, shaped, and regulated by the polity via public law.

This chapter also demonstrates the deep roots of economic regulation in America. In contrast to historical depictions of the period from 1776 to 1860 as an era of Americanization, transformation, and modernization heralding the ascendancy of liberal constitutionalism and free-market economics, it documents the pervasiveness of a commitment to a regulated economy in a well-ordered society. Indeed, the deluge of restrictions on economic life passed by state and local authorities in this period suggests that “regulation” might supplant “the market” as a better metaphor for the age. Regulations were not quaint residues of a feudal regime doomed to obsolescence. Rather public economy and the well-regulated society functioned as central, compelling philosophies in early American public law—philosophies busily put into practice through a host of particular rules and prosecutions solicitous of public goods over individual interests.

The market did not burst on the American stage circa 1776 of its own natural self-volition. It was a human, historical, and political creation. Postrevolutionary America was indeed the site of an economic transformation. But it owed more to the visible laws of police than the natural laws of economics. This was a revolution that had more to do with the conspicuous invention of political economy than the invisible hand of the free market.

Market Revolution or Legal-Political Economy?

The first hurdle blocking a reconstruction of the notion of public economy in nineteenth-century America is a twentieth-century perspective that separates public and private and understands economy as an autonomous and natural force in history. One of its most persistent historical themes is the notion of antebellum America as a site for the pivotal transition from colonial mercantilism to laissez-faire capitalism. The publication of Adam Smith’s *Wealth of Nations* (1776), the story goes, “inaugurated an economic revolution by emphasizing laissez-faire and individualism in place of the mercantilist emphasis on government intervention and statism.”³ Building on accounts of the ascen-

PROOF OF FIRE ARMS. *March 8, An. 1805.* 259

than twice the amount of gold and silver actually in their vaults," Not to issue be, and the same is hereby repealed; and hereafter the said bills for more Corporation shall not issue and have in circulation, at any one than twice the time, bills, notes, or obligations, to a greater amount than capital. twice the capital stock actually paid in.

SECT. 2. And be it further enacted, That instead of six, not less than five Directors of the aforesaid Corporation shall constitute a board for the transaction of business, of whom the President shall always be one, except in case of sickness or necessary absence, in which case the Directors present may choose a Chairman in his stead. Directors.

[This Act passed *March 8, 1805.*]

An Act making a temporary Alteration in the Toll to be received by *The Proprietors of the Locks and Canals on Connecticut River.*

[This Act passed *March 8, 1805.*]

An Act to incorporate the north-westerly Part of the Town of *Otisfield*, and the easterly Part of the Town of *Bridgeton*, in the County of *Cumberland*, into a separate Town by the Name of *Harison*.

[This Act passed *March 8, 1805.*]

An Act to provide for the Proof of Fire Arms manufactured within this Commonwealth.

WHEREAS no provision hath been made by law for the proof of fire arms manufactured in this Commonwealth, by which it is apprehended that many may be introduced into use which are unsafe, and thereby the lives of the citizens be exposed: To prevent which, Preamble.

SECT. 1. Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That the Governor, by and with the advice and consent of the Council, be, and he hereby is empowered to appoint, in any part of this Commonwealth where the manufacture of fire arms is carried on, suitable persons to be provers of fire arms, not exceeding two in any county, who shall be sworn to the faithful discharge of their trust, whose duty it shall be to prove all musket barrels and pistol barrels, which being sufficiently ground, bored and breeched, shall be offered to him to be proved; who shall prove the musket barrels twice in manner following, viz. first with a charge consisting of one eighteenth part of a pound of powder, one ounce of which, in a five and to be proved. How arms are an

260

PROOF OF FIRE ARMS.

March 8, An. 1805.

How approv-
ed arms are
to be marked.

an half inch howitz, at an elevation of forty five degrees, will carry a twenty-four pound shot eighty yards, with a ball suited to the bore of the barrel; the second proof to be with a charge consisting of one twenty-second part of the same powder, with a ball suited to the bore of the barrel; and shall prove the pistol barrels once with a charge consisting of one twenty-second part of a pound of powder, one ounce of which, in a five and half inch howitz at an elevation of forty-five degrees, will carry a twenty-four pound shot seventy yards, with a ball suited to the bore of the barrel; which said powder and ball it shall be the duty of the prover to provide; and if the said musket and pistol barrels shall stand the proof aforesaid, and shall in no respect fail, then it shall be the duty of the said prover to stamp the same on the upper side, and within one and an half inches of the breech of said barrels, with a stamp consisting of the initial letters of the prover's name, and over those letters the letter P. also, in the line of the said initial letters, and further up said barrel the figures designating the year of our Lord in which the proof is made, and over the said figures the letter M. which said letters and figures shall be so deeply impressed on said barrel, as that the same cannot be erased or disfigured, and shall be in the form follow-

P M

Fees

ing AB 1805. And when any barrels shall burst or shall in any manner fail in the proving as aforesaid, so that in the opinion of the prover they are unfit for use, they shall not be stamped, but the said prover shall suffer the owner to take them away; and any prover so proving musket or pistol barrels as aforesaid, shall be entitled to receive from the owner, for each musket barrel *thirty three cents*, and for each pistol barrel *twenty five cents*, whether the same stand proof and are stamped or not.

Penalty for
not having
arms proved.

SECT. 2. *And be it further enacted*, That if any person, after the first day of *June* next, shall manufacture within this Commonwealth, any musket or pistol, without having the barrels proved and stamped as aforesaid, except such as are or may be manufactured in the armory of the *United States*, or in fulfilment of some contract made and entered into, or that may hereafter be made and entered into, for the manufacturing of fire-arms for the *United States*, shall forfeit and pay for every such musket or pistol the sum of *ten dollars*, to be recovered in an action of debt, before any Court proper to try the same, by any person who shall sue for and recover the same, to his own use.

SECT. 3. *And be it further enacted*, That if any person, after the said first day of *June* next, shall sell and deliver, or shall knowingly purchase, any musket or pistol, which shall have been manufactured within this Commonwealth after the said

MESNE PROCESS.

March 8, An. 1805.

261

said first day of *June* next, which shall not have the marks of proof above required, the person so selling and the person so purchasing shall each forfeit the sum of *ten dollars*, to be recovered by action of debt, before any Court proper to try the same, to the use of any person who shall sue for and recover the same.

Penalty for selling or buying arms not proved.

SECT. 4. *And be it further enacted*, That if any person shall falsely forge or alter the stamp of any prover of fire-arms, so appointed as aforesaid, impressed on any musket or pistol barrel, pursuant to this Act, and be convicted thereof before the Supreme Judicial Court, he shall be punished by fine not exceeding *fifty dollars*, nor less than *twenty dollars*, according to the nature and aggravation of the offence.

Penalty for forging stamp.

[This Act passed March 8, 1805.]

An Act to incorporate a Number of the Inhabitants in the Town of *Limington*, in the County of *York*, into a separate Religious Society by the Name of *The First Baptist Society in Limington*.

82

[This Act passed March 8, 1805.]

An Act directing the Mode of attaching on Mesne Process, and selling by Execution Shares of Debtors in incorporated Companies.

83

SECT. 1. *BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same*, That the share or shares or interest of any person, in any turnpike, bridge, canal or other company, which heretofore has been or hereafter may be incorporated by the Legislature of this Commonwealth, with all the rights and privileges appertaining to such shares, may be attached on mesne process and taken on execution; and when any such shares or interest shall be attached on mesne process, or taken on execution without such previous attachment, an attested copy or copies of such writ of attachment or execution, shall, by the officer holding the same, be left with the Clerk and Treasurer or Cashier of such company; and so many of said shares or so much of said interest may be sold on said execution at public vendue, to the highest bidder, as shall be sufficient to satisfy the same, and the charges of the sale, after notice shall have been given of the time and place of sale in manner as hereinafter provided; and in case the officer making the sale, or the purchaser or purchasers of any such shares or interest, do cause an attested copy or copies of such execution, and the officer's return thereon, to be left with such Clerk and Treasurer or Cashier, within fourteen days after the sale is completed, and pay

Shares may be attached on mesne process, taken in execution, and sold.

CHAPTER CLXII.

An Act to provide for the proof of Firearms.

SEC. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That the Governor, by and with the consent of the Council, be and he hereby is empowered to appoint suitable persons, to be provers of the barrels of all new, or unused firearms; and it shall be the duty of each person so appointed, to prove and try the strength of the barrels of all firearms which shall be offered him for that purpose, in such manner as to satisfy himself of the strength of the same; and shall in a permanent manner, mark and number every barrel by him so proved, and make, and deliver to the person applying to have the same proved, a certificate for each barrel proved, and found good in the form following:

Governor to appoint provers of gun barrels.

Barrels to be marked and certificate given.

I certify that on this day of A. D. 18 I proved for , a musket, pistol, or rifle barrel, (as the case may be,) and which is numbered and marked as in the margin, and that the same is good and strong.

A. B. Prover of firearms.

SEC. 2. *Be it further enacted*, That each prover shall be entitled to receive from the person applying to have such barrel proved, twenty-five cents, in addition to the expense of the powder necessary for that purpose for each barrel so proved; whether the same shall stand the proof and be marked or not.

Prover's fees.

SEC. 3. *Be it further enacted*, That if any person shall sell or offer for sale within this State, any new, or unused musket, rifle or pistol barrel, without having the same first proved, marked and certified according to the provisions of this Act, he shall forfeit for each barrel so sold, the sum of ten dollars, to be recovered by an action of debt before any Court proper to try the same; to the use of any person who shall sue for and recover the same, or by indictment to the use of the State.

Penalty for selling guns or pistols, not proved and marked.

How recovered.

SEC. 4. *Be it further enacted*, That if any person shall falsely alter the stamp or mark or the certificate of any prover of firearms, appointed as aforesaid, and be convicted thereof before any Court proper to try the same, he shall forfeit and pay a fine of not more than one hundred dollars, nor less than twenty dollars, according to the nature and aggravation of the offence, for the use of the State.

Penalty for altering marks or certificates.

[Approved March 10, 1821.]

1 matters relating to guns or gun powder.⁷² Thus, Massachusetts enacted a law that
2 prohibited storing a loaded weapon in a home, a firearms safety law that recognized
3 that the unintended discharge of firearms posed a serious threat to life and limb.⁷³
4 New York City even granted broad power to the government to search for gun
5 powder and transfer powder to the public magazine for safe storage:

6 [I]t shall and may be lawful for the mayor or recorder, or any two
7 Alderman of the said city, upon application made by any inhabitant or
8 inhabitants of the said city, and upon his or their making oath of
9 reasonable cause of suspicion (of the sufficiency of which the said mayor
10 or recorder, or Aldermen, is and are to be the judge or judges) to issue his
11 or their warrant or warrants, under his or their hand and seal, or hands
12 and seals for searching for such gun powder, in the day time, in any
13 building or place whatsoever.⁷⁴

14 37. The power to regulate firearms and gunpowder was therefore at the
15 very core of the police power and inheres in both states and local municipalities.
16 The application of the police power to firearms and ammunition was singled out as
17 the quintessential example of state police power by Chief Justice John Marshall in
18 his 1827 discussion of laws regulating gun powder in *Brown v. Maryland*.⁷⁵ This
19 was so even though gunpowder was essential to the operation of firearms at that
20 time and gun powder regulations necessarily affected the ability of gun owners to
21 use firearms for self-defense, even inside the home.

22 ⁷² CORNELL, *supra* note 33.

23 ⁷³ Act of Mar. 1, 1783, ch. XIII, 1783 Mass. Acts 37, An Act in Addition to
24 the Several Acts Already Made for the Prudent Storage of Gun Powder within the
25 Town of Boston, § 2.

26 ⁷⁴ An Act to Prevent the Storing of Gun Powder, within in Certain Parts of
27 New York City, LAWS OF THE STATE OF NEW-YORK, COMPRISING THE
28 CONSTITUTION, AND THE ACTS OF THE LEGISLATURE, SINCE THE REVOLUTION,
FROM THE FIRST TO THE FIFTEENTH SESSION, INCLUSIVE 191-2 (Thomas Greenleaf,
ed., 1792).

⁷⁵ 25 U.S. (12 Wheat.) 419, 442-43 (1827) (“The power to direct the removal
of gunpowder is a branch of the police power”).

1795. the several reserved tracts of land adjoining the towns of *Erie*, *Franklin*, *Warren* and *Waterford*, and for other purposes therein mentioned." The governor is directed to appoint two persons, who, together with the commissioner of sales, are to appraise all the in-lots in squares, and the out lots in the second section of *Erie*, which appraisement shall be entered in a book for that purpose, they shall then advertise the lots for sale on a day certain; but no contract shall be confirmed until sixty days after opening the books; and the terms prescribed, in yearly instalments; the bonds to be sent to the Secretary of the Land-Office within six months; who shall issue patents to the purchasers, on payment according to the sales. The commissioner and persons appointed to be under oath or affirmation, and to receive a certain compensation.

The Beach of the lake, from the upper corner of the garrison tract, and for twenty perches back from the water's edge, down the lake to the out-lots, and from thence down the same,

including all the land between the out-lots and the water's edge, to the tract of land No. 38, shall be and remain a public landing for the use of the inhabitants and others, until otherwise appropriated by law; and penalty for obstructing the said landing.

By an act passed 2d April, 1811. The occupancy and use of certain lands near *Presqu' Isle*, not less than two nor more than four acres, are ceded to the United States, for the purpose of erecting a light-house, commissioners appointed to survey and lay it off, and transmit the draft thereof to the Secretary of the treasury of the United States. —The jurisdiction, and right of soil excepted by the state.

An academy is incorporated in the borough of *Erie*, by act of 2d April, 1811. And five hundred acres of the reserved lands, adjoining the town and fifteen town lots, are granted to the said academy, for the use thereof, &c.

Two out-lots of the town of *Franklin*, ceded to the United States, by act of 1st Feb'y, 1796, (chap. 1858,) *post*.

CHAPTER MDCCCLXVI.

An ACT providing for the inspection of Gun-powder.

[See vol. 2, pa. 401, and the note thereto.]

WHEREAS gun-powder imported from abroad, and manufactured within this state, hath frequently been found to vary much in its strength, and sometimes of inferior qualities, and its defects not discovered until brought into actual use: And whereas the modes heretofore used to prove the force thereof have been found uncertain and variable: And whereas Joseph Leacock, of the city of Philadelphia, hath invented an engine, called a pendulum powder proof, with a graduated arch and catch-pall, by which it is conceived that the force of gun-powder may be proved by experiment, and the article reduced to certain and uniform standards of strength, whereby the manufacture may be advanced towards ultimate perfection, and the purchaser and consumer protected against fraud and imposition:

Gun-powder manufactured in this state, how to be packed in casks.

SECT. 1. *Be it enacted by the Senate and House of Representatives of the commonwealth of Pennsylvania, in General Assembly met, and it is hereby enacted by the authority of the same,* That from and after the first day of October next, all gun-powder manufactured within this state, with intent, to sell the same within the city or county of Philadelphia, shall be put in good and tight kegs or casks of twenty-five, fifty, or one hundred pounds neat weight, each made of well seasoned timber, bound together with at least twelve hoops, and having a hole bored in each head, of the diameter of one fourth part of an inch, well stopped with corks and having the tare weight of each cask marked thereon, and that all such

gun-powder, and all other gun-powder, wheresoever manufactured, 1795.
imported into the port of Philadelphia, or brought into the city or
county of Philadelphia for sale, shall be deposited, forthwith on such
importation or bringing in by land or by water, in the public maga-
zine in the said city, and delivered to the care of the keeper of the
same, who shall give his receipt for the same, deliverable to the or-
der of him or them who shall so deposit the same.

All gun-
powder
manufactured, or im-
ported, to be
deposited in
the maga-
zine.

SECT. II. *And be it further enacted by the authority aforesaid,* That David Rittenhouse, Francis Gurney, and Thomas Proctor be, and they are hereby, appointed commissioners, to procure at least two pendulum powder proofs, upon the construction invented by the said Joseph Leacock, as nearly uniform in the length of the radius and weight of pendulum, and in length of caliber and weight of the pistol, as they can procure the same, and therewith make experiments of the respective strength or force of the several species of gun-powder imported from abroad, and manufactured within this state, sufficient in number to ascertain the quality and force of three different degrees of strength in explosion, and marking the number of degrees on the graduated arch of the said engine, to which equal quantities by weight of the said three species of gun-powder, rammed with equal force into the pistol, shall elevate the said pendulum; and the powder, which shall be barely capable of raising the said pendulum to the lowest rate of elevation, shall be the standard for the state of Pennsylvania for gun-powder of the first or lowest proof; and the powder, which shall be capable of raising the said pendulum to the highest rate of elevation, shall be the standard of gun-powder for the state of Pennsylvania of the third or highest proof; and the middle or second proof standard of gun-powder shall be ascertained by the number of degrees on the said graduated arch, to which the same quantity by weight in equal moieties of the first and third proof powder shall be capable of raising the said pendulum; and the said standard being so fixed and ascertained, the said commissioners shall make report thereof in writing, by indentures under their hands and seals, one part thereof, together with one of the said two pendulum powder proofs, and as accurate a draft and description thereof as can be made shall be returned to the Governor, to be filed and remain in the office of the Secretary of the commonwealth; one other part shall be returned to the Master of the Rolls, to be recorded in his office, and filed among the laws of the state; and the other part, together with the other pendulum powder proofs, shall be delivered to the first Inspector of gun-powder to be appointed in pursuance of this act, and by him, and his successors in office, to his and their successors, as often as another officer shall be appointed.

Commission-
ers appointed
to procure
pendulum
powder
proofs.

Standard
proofs of gun-
powder.

The commis-
sioners to
report, and
return accu-
rate drafts
of the two
pendulum
powder
proofs;

where the
same shall
be deposited.

SECT. III. *And be it further enacted by the authority aforesaid,* That so often as the said pendulum powder proofs in the possession of the Inspector shall by natural wear, or by accident, be rendered unfit for use, or its accuracy doubted, the same shall be compared with the other remaining in the Secretary's office, and if found necessary, a new one constructed, and made conformably thereto in measure and weight, for the use of the Inspector at his own costs and charges.

How the
pendulum in
the keeping
of the in-
spector may
be repaired,
or a new one
made.

1795. *SECT. IV. And be it further enacted by the authority aforesaid,*
That the said Commissioners shall prepare and report a plan for the necessary buildings, and an estimate of the expense thereof, and the same being laid before and approved by the Governor, he shall cause to be erected and built, on the most proper part of the lot belonging to the public magazine aforesaid, a brick building, for the use of the Inspector, with two apartments, one for the purpose of keeping his engine apparatus and for making proofs, and the other for the purpose of keeping the samples of powder in safety, the expense of which building shall be paid and defrayed by warrants to be drawn by the Governor on the State Treasurer, which shall be allowed him on settlement of his accounts, out of the fund for the support of government: *Provided,* That the whole amount of the expense thereof do not exceed the sum of five hundred dollars.

SECT. V. And be it further enacted by the authority aforesaid,
That it shall and may be lawful for the Governor of this commonwealth, and he is hereby required, as soon as conveniently may be after the passing of this act, and as often afterwards as the office shall become vacant by death, resignation or otherwise, to appoint one suitable and skilful person to be inspector of gun-powder in and for the city, port and county of Philadelphia, who before he enters on the duties of his office, shall take and subscribe the oath or affirmation required by law for the support of the constitutions of the United States and of this state; and moreover shall take and subscribe, before the Governor, an oath or affirmation, that he will well and faithfully perform all and singular the duties required by this act, according to the best of his knowledge, skill and ability, and without prejudice or partiality.

SECT. VI. And be it further enacted by the authority aforesaid,
That it shall be the duty of the Inspector of gun-powder so to be appointed, for the time being, to attend at the said public magazine, and his office so to be built, as often as shall be necessary, to inspect and examine all gun-powder there to be deposited, to draw samples from each cask of powder which shall be so as aforesaid bored, and to open or otherwise get samples of casks of powder not bored as aforesaid, and removing such samples to his office, there to prove the same by the pendulum proof aforesaid, and note the standard quality of each cask, to provide himself with cedar plugs stamped on the outer end with the letters S. P. and the figures number one, number two, and number three, to designate the first, second and third proofs of standard gun-powder of the state of Pennsylvania, and another stamped with the letters S. P. to designate condemned gun-powder, and therewith carefully to plug up the holes opened or made for the purpose with such marked plugs, as the proof quality of the powder in each cask respectively contained, and occasionally to weigh the said casks; and if upon weighing the same suspicion should arise that the casks are false tared, or do not contain the quantity herein above mentioned for each cask, to empty the same, and weigh the cask and powder separately, to ascertain the deficiency, if any, in the neat weight, and to fill the same to its due weight out of any other cask belonging to the same person, marking the

A suitable building to be erected, for the use of the inspector.

Limitation of the expense.

An inspector of gun-powder to be appointed.

His qualification.

Duties of the inspector.

To inspect, examine and prove the gun-powder;

to mark the standard quality;

to mark condemned gun-powder;

to weigh the gun-powder occasionally;

and to supply any deficiency from other casks.

weight taken on the ullage casks, and keeping an exact account in his books thereof, and of the names of the owners, and the persons bringing and depositing the same. 1795.

SECT. VII. *And be it further enacted by the authority aforesaid,* That every cask of gun-powder inspected as aforesaid shall be plugged up with a plug marked with the number next below the standard number of degrees to which the pendulum shall not be elevated in the proof, and that every cask of gun-powder inspected as aforesaid, which shall not elevate the pendulum to the standard of the first or lowest proof, shall be condemned, and one pint of clean water for every twenty-five pounds of powder therein contained shall be poured thereinto, and the hole plugged up with the plug marked S. P. before the same shall be delivered over to the

Rule for marking or condemning gun-powder.

owner to be refined and re-manufactured; and to prevent a failure in the inspection by the temporary indisposition of the Inspector, it shall and may be lawful for him to execute all the duties hereby required by a Deputy, to be appointed by him, and approved by the Governor, the Deputy first taking and subscribing the like oaths or affirmations hereby required from the principal.

The inspector, may appoint a deputy.

SECT. VIII. *And be it further enacted by the authority aforesaid,* That the keeper of the said magazine shall at all seasonable times in every juridical day in the year admit the said Inspector, and his Deputy and Assistants, into the said magazine, to do and perform the several duties hereby required of him and them, and shall not deliver any powder from the said magazine until the same shall be inspected as aforesaid.

The inspector, &c. to be admitted into the magazine.

Powder not to be delivered, till inspected.

SECT. IX. *And be it further enacted by the authority aforesaid,* That no person appointed to the office of Inspector, or his Deputy, shall, during the time of holding or exercising the said office, be concerned directly or indirectly in manufacturing, buying or selling gun-powder in gross, or by retail, under penalty of forfeiting the sum of five hundred dollars for every such offence, to be recovered by any person who will sue for the same in any court having competent jurisdiction, one moiety for the use of this commonwealth, and the other to the use of him or them who shall sue for the same; and upon conviction thereof shall be removed from the said office, and wholly disqualified to take or hold any office of trust or profit under this commonwealth.

Penalty, if the inspector or his deputy are concerned in manufacturing or selling gun-powder.

SECT. X. *And be it further enacted by the authority aforesaid,* That if any person, from and after the said first day of October next, importing or bringing into the port or city, or county of Philadelphia, any quantity of gun-powder exceeding twenty-five pounds, with intent to sell the same, shall neglect to deposit the same for inspection in the magazine aforesaid, or shall sell the same before it be inspected and marked as aforesaid, or shall sell any gun-powder that shall be condemned as aforesaid as and for merchantable gun-powder, every person so offending shall forfeit all such gun-powder as aforesaid.

Penalty on not depositing gun-powder in the magazine, or selling the same without inspection.

SECT. XI. *And be it further enacted by the authority aforesaid,* That the Inspector shall be entitled to demand and receive of and from the owner and possessor of all gun-powder deposited in the

Fees of the inspector.

1795. said magazine, and by him or his Deputy examined, proved and plugged, as aforesaid, the following sums or rates, whether the same be approved or condemned, paid or secured, before the same shall be removed from the magazine, if the Inspector shall so require ; for every cask of powder, manufactured in this state, or any of the United States, bored, and stopped with corks by the manufacturer, containing twenty-five pounds neat weight, seven cents ; for every like cask containing fifty pounds, eight cents ; for every like cask containing one hundred pounds, nine cents ; and for every cask of foreign powder, or powder manufactured in the United States, not bored and stopped with corks as aforesaid, double the said price or rates ; and for every cask which he shall find deficient one per cent. in weight and shall fill up, fifty cents.

How disputes between the owner of gun-powder and the Inspector shall be decided.

SECT. XII. *And be it further enacted by the authority aforesaid,* That if any dispute should arise between the owner, possessor or consignee of any such powder and the Inspector, touching the proof or condemnation thereof, or of the goodness of the materials and manner in which the casks are made, upon application by the owner, possessor or consignee of such powder to one of the Magistrates of the city or county of Philadelphia, where the dispute shall arise, the said Magistrate shall issue his warrant to three indifferent judicious persons to be triers thereof, one of them to be named by the said owner, possessor or consignee, one by the said Inspector, and the third by the said Magistrate, directing the said triers to view and examine the said powder, and make report to him forthwith touching the condition thereof, and that if they shall find the said powder not merchantable, that they certify to him the cause thereof, and the said Magistrate shall thereupon give his judgment agreeably to the report of the said triers, or any two of them ; and in case the said Magistrate shall on such report adjudge the powder not to be merchantable, he shall award the owner, possessor or consignee thereof, to pay all costs ; but in case the said powder shall be found merchantable, the Inspector shall be adjudged to pay all costs, which may have accrued, and shall thereupon cause the powder to be marked as of the standard to be directed by the said triers. (u)

Passed 18:h April, 1795.—Recorded in Law Book No. VI. page 26.

(u) By a supplement to this act, passed 29th March, 1802, in this volume, (chap. 2264.) The Inspector is authorized, directed and enjoined on request, &c. of any owner or occupier of any manufactory of gun-powder, within the county of Philadelphia, to repair to such manufactory, from time to time, to inspect and mark all gun-powder manufactured thereat, and to receive ten cents a mile, travelling expenses, therefor, besides his usual fees.

And the owner may remove such gun-powder immediately from the manufactory to the place of exportation.

Penalty on the superintendant of the magazine, or his deputy, if concerned directly, or indirectly, in manufacturing or selling gun-powder.

The superintendant, in future, not to receive any fee or emolument for the delivery of any gun-powder ; but shall only charge for the storage of gun-powder deposited in the magazine.

with the advice of the Council, is hereby authorized to make. And the gaoler so appointed shall give such bonds and in the same manner, as is required of a sheriff, for the faithful performance of the duties of his office, and shall continue in office during the vacancy in the office of sheriff.

Defaults of deputies, &c. after death, &c. of sheriff.

Proviso.

SECT. 2. *Be it further enacted*, That the defaults or misfeasances in office, of any gaoler, or deputy-sheriff, after the death or resignation of any sheriff, by whom he was appointed, shall be adjudged a breach of the condition of the bond given by such sheriff: *Provided, however*, that this act shall not be construed to make any surety, in any such bond, which has heretofore been given by such sheriff, liable to any suit which could not heretofore be legally prosecuted against him.

And, whereas doubts have arisen respecting the authority and duty of deputy-sheriffs to execute such precepts as may be in their hands at the time of the accruing of a vacancy in the office of sheriff in certain cases: Therefore,

Deputy sheriffs to serve precepts in their hands at the time a vacancy happens in the office of sheriff.

SECT. 3. *Be it further enacted*, That in every case of a vacancy in the office of sheriff in any county, by death, resignation, removal, or otherwise, every deputy sheriff, in office under such sheriff, having any writ or precept in his hands, at the time of such vacancy, shall have the same authority, and shall be under the same obligation to serve, execute, and return such writ or precept, as if such sheriff had continued in office. [*Feb. 24, 1809.*] Further add. acts—1811 ch. 102: 1813 ch. 189: 1822 ch. 20.

Chap. 47.

An ACT to incorporate certain persons as Trustees, to improve and manage a Fund towards the support of Schools, in the north westerly parish in the town of Boxford. [*Feb. 27, 1809.*]

Chap. 48.

An ACT to incorporate sundry persons into a Company, by the name of The Boylston Market Association. [*Feb. 27, 1809.*]

Chap. 49.

1807 ch. 93.

An ACT confirming the laying out the road of the Housatonic Turnpike Corporation, at and near the line of the State of New-York. [*Feb. 27, 1809.*]

Chap. 50.

An ACT to incorporate Benjamin Dearborn and others into a Society by the name and style of The Massachusetts Association for the encouragement of useful inventions. [*Feb. 27, 1809.*]

Chap. 51.

An ACT to incorporate Rufus Pierce and others, for certain purposes. [*Feb. 27, 1809.*]

Chap. 52.

An ACT providing for the appointment of Inspectors, and regulating the manufactory of Gun-Powder.

Governor to appoint inspectors of gunpowder.

SECT. 1. *BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same*, That his Excellency the Governor, by and with the advice of Council, be, and he is hereby authorized to appoint an inspector of gunpowder for every public powder magazine, and at every manufactory of gunpowder in this Commonwealth, and at such other places, as may by him be thought necessary; and his Excellency the Governor, by and with the advice of Council, is hereby further authorized and empowered to remove said inspectors, or any of them at pleasure, and may by new appointments from time to time fill any vacancy, or vacancies which may happen.

SECT. 2. *Be it further enacted*, That from and after the first day of July next, all gunpowder which shall be manufactured within this Commonwealth shall be composed of the following proportions, and quality of materials, that is, every one hundred parts of gunpowder, shall be composed of fourteen parts of fresh burnt coal, made from wood which forms the least ashes, and which has been carefully and well prepared, and made into coal, after being stripped of its bark, ten parts of pure sulphur, and seventy-six parts of purified nitre.

Materials of which gunpowder shall be composed.

SECT. 3. *Be it further enacted*, That it shall be the duty of each of said inspectors to inspect, examine and prove all gunpowder, which after the first day of July next, shall be deposited at any public powder magazine, or manufactured in this Commonwealth, before the same shall be removed from the manufactory, or received into such public powder magazine, and if upon such inspection and examination it shall appear to the inspector, that such gunpowder is well manufactured, and composed of pure materials, and of the proper proportions of materials, and such gunpowder shall be of the proof herein after mentioned, the inspector shall mark each cask, containing gunpowder by him inspected, examined and proved as aforesaid, with the words Massachusetts Inspected Proof, and with his christian and surname, and shall also mark in figures upon each cask the quantity of powder contained therein, and the year in which the inspection is made.

Duty of inspectors.

Casks to be marked.

SECT. 4. *Be it further enacted*, That no gunpowder within this Commonwealth shall be considered to be of proof unless one ounce thereof, placed in the chamber of a four and an half inch howitzer, with the howitzer elevated so as to form an angle of forty-five degrees with the horizon, will, upon being fired, throw a twelve pound shot seventy-five yards at the least.

Proof of powder.

SECT. 5. *Be it further enacted*, That whenever any of said inspectors shall discover any gunpowder, deposited at any public powder magazine, or any other place within this Commonwealth, which is not well manufactured, or which is composed of impure materials, or of an improper proportion of materials, and which shall not be of the proof herein before mentioned, the inspector in such case shall mark each cask containing such impure, ill manufactured or deficient gunpowder, with the word "Condemned" on both heads of the cask, and with the same word on the side thereof, with the christian and surname of the inspector on one head of the cask.

Casks of bad powder to be marked.

SECT. 6. *Be it further enacted*, That if any person shall knowingly sell any condemned gunpowder, as and for good gunpowder, or shall fraudulently alter, or deface any mark, or marks, placed by any inspector upon any cask or casks containing gunpowder, or shall fraudulently put any gunpowder, which shall not have been inspected, or which has been condemned, into any cask or casks, which shall have been marked by any inspector, agreeably to the provisions contained in the

Penalty for selling condemned powder for good, and for altering marks on casks, &c.

third section of this Act, every such person so offending shall forfeit and pay not less than two hundred, nor more than five hundred dollars, for each and every offence, to be recovered in an action of debt in any court of competent jurisdiction, one half to the use of the Commonwealth, the other half to the use of him or them, who shall sue and prosecute for the same.

Inspector to be sworn.

SECT. 7. *Be it further enacted*, That each inspector who may be appointed by virtue of this Act, shall, before he acts as inspector, be sworn to the faithful and impartial discharge of the duties of his office, and each inspector shall be allowed one cent for each pound of gunpowder by him examined, inspected and proved, whether the same be by him approved or condemned, to be paid by the owner or owners of the gunpowder.

His fees.

Powder not to be sold or exported, before inspection.

SECT. 8. *Be it further enacted*, That if any manufacturer of gun powder shall sell or dispose of, or shall cause or permit to be sold or disposed of, or shall export, or cause to be exported without the limits of this Commonwealth, any powder of his manufacture, before the same has been inspected and marked agreeably to the provisions of this Act, he shall forfeit and pay the sum of fifty cents for every pound of powder so sold, disposed of, or exported, to be recovered in the manner provided in the sixth section of this Act.

Forfeiture for knowingly selling, &c. bad powder.

SECT. 9. *Be it further enacted*, That if any person within this Commonwealth, after the first day of July next shall knowingly sell, expose, or offer for sale within this Commonwealth any gunpowder which is not well manufactured, or which is composed of impure materials, and which shall not be of the proof herein before required, shall forfeit and pay not less than five dollars, nor more than fifty dollars, for each and every offence, to be recovered in the manner provided in the sixth section of this Act. [March 1, 1809.] Add. acts—1809 ch. 118 : 1810 ch. 73.

Chap. 53.

An ACT authorizing the several Courts of Common Pleas in this Commonwealth, to allow accounts, and order payment, for services and expenses incident to said courts.

BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That the several Courts of Common Pleas in this Commonwealth be, and they are hereby authorized and empowered to receive, examine, and allow the accounts, and order payment out of the treasury of their respective counties for services and expenses incident to said courts, any law to the contrary notwithstanding. [March 1, 1809.] Power transferred to the Circuit Courts—1811 ch. 33 : and thence to the Court of Common Pleas for the Commonwealth—1820 ch. 79.

Chap. 54.
1803 ch. 146.

An ACT in addition to an Act, entitled, "An Act establishing the Hartford and Dedham Turnpike Corporation." [March 1, 1809.] Further add. act—1812 ch. 91.

Chap. 55.

An ACT to incorporate a Religious Society in the Second Parish in Shapleigh. [March 1, 1809.]

Chap. 56.

An ACT to incorporate a number of the inhabitants of the Town of Parsonsfield, in the County of York, into a Religious Society, by the name of The First Baptist Society in Parsonsfield. [March 1, 1809.]

town or towns adopting the same, as fully to all intents and purposes, as to the town of Portsmouth.

Approved June 28, 1823.

TITLE LXII.

GUNPOWDER.

CHAPTER I.

AN ACT to prevent the keeping of large quantities of Gun- Powder in private houses in Portsmouth, and for appointing a keeper of the Magazine belonging to said town. Passed Feb. 18, 1794.

WHEREAS the keeping of large quantities of gun-powder in private houses in Portsmouth aforesaid, or in merchant ships, or vessels lying at the wharves in said town, would greatly endanger the lives and properties of the inhabitants thereof in case of fire ; which danger might be prevented by obliging the owners of such powder, to deposit the same in the magazine provided by said town for that purpose ;

Therefore,

SECT. 1. *Be it enacted by the senate and house of representatives, in general court convened,* That if any person or persons, shall keep in any dwelling-house, store or other building on land within the limits of said Portsmouth, except the magazine aforesaid, more than ten pounds of gun-powder at any one time, which ten pounds shall be kept in a tin cannister, properly secured for that purpose, such person or persons shall forfeit the powder so kept, to the firewards of said Portsmouth, to be laid out by them in purchasing such utensils as they may judge proper for the extinguishing of fire ; and the said firewards are hereby directed and empowered to seize, and cause the same to be condemned in any court of record proper to hear and try the same, to be disposed of for the purpose aforesaid. And the offender shall also forfeit and pay a fine for the use of the poor of said Portsmouth, equal to the value of the powder so kept in any store, dwelling house or building ; which fine shall be sued for and recovered by the overseers of the poor of said Portsmouth for the use of said poor, in any court of law proper to try the same.

Gun-powder not to be kept in dwelling-houses, &c.

Fine.

SECT. 2. *And be it further enacted, by the authority aforesaid,* That every master of any merchant ship or vessel, bringing gunpowder into said Portsmouth, shall, within the space of forty-eight hours after his arrival, deposit in

Gun-powder to be deposited in magazine.

said magazine, all the gun-powder by him so brought as aforesaid; and if he shall neglect so to do, he shall pay a fine of thirty pounds, for the use of the poor of said Portsmouth, to be recovered by said overseers in manner aforesaid.

Keeper of
magazine to
be chosen.

SECT. 3. *And be it further enacted*, That there shall be chosen annually, or oftener if necessity require, by the inhabitants of said Portsmouth, being legal voters, a keeper of said magazine, whose duty it shall be to receive into and deliver out of said magazine, all the powder so deposited, and to account therefor, who shall have a right to demand and receive for his time and trouble in attending on said business, at the rate of one shilling per hundred weight, for all quantities of powder above ten pounds, that he shall so receive into, and deliver out of said magazine; and for all quantities under ten pounds, at the rate of a half penny per pound.

SECT. 4. *And be it further enacted*, That no person shall transport or carry through the compact part of the town of Portsmouth, more than ten pounds of gun-powder at any time without the same is in a close carriage, or is sufficiently covered, on penalty of forfeiting the sum of one dollar for each offence, to be recovered and applied in the same manner as is herein before directed.

SECT. 5. *And be it further enacted*, That the act to prevent the keeping large quantities of gun-powder in private houses in Portsmouth, passed the twenty-eighth day of February, one thousand seven hundred and eighty-six, be, and hereby is repealed.

Approved February 18, 1794.

CHAPTER II.

Passed June
21, 1820.

AN ACT to provide for the appointment of inspectors and regulating the manufactory of gunpowder.

Inspectors of
gunpowder to
be appointed.

SECT. 1. **B**E it enacted by the senate and house of representatives, in general court convened, That his excellency the governor by and with the advice of council, be, and he is hereby authorized to appoint an inspector of gunpowder for every public powder magazine, and at every manufactory of gunpowder in this state, and at such other places as may by him be thought necessary; and his excellency the governor by and with the advice of council is hereby further authorized and empowered to remove said inspectors or any of them at pleasure, and may by new appointments from time to time fill any vacancy or vacancies which may happen.

Inspectors of Gunpowder.

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SECT. 2. *And be it further enacted*, That from and after the first day of July next, all gunpowder which shall be manufactured within this state, shall be composed of the following proportions and quality of materials, that is, every one hundred parts of gunpowder shall be composed of fourteen parts of fresh burnt coal, made from wood which forms the least ashes, and which has been carefully and well prepared and made into coal, after being stripped of its bark ; ten parts of pure sulphur, and seventy-six parts of purified nitre.

Proportion and quality of materials for the manufacture of gunpowder.

SECT. 3. *And be it further enacted*, That it shall be the duty of each of said inspectors to inspect, examine and prove all gunpowder which after the first day of July next shall be deposited at any public powder magazine, or manufactory in this state, before the same shall be removed from the manufactory or received into such public powder magazine, and if upon inspection and examination it shall appear to the inspector that such gunpowder is well manufactured and composed of pure materials, and such gunpowder shall be of the proof hereinafter mentioned, the inspector shall mark each cask containing gunpowder by him inspected, examined, and proved as aforesaid, with the words "*New-Hampshire inspected proof*," and with his christian and surname, and shall also in figures mark upon each cask the quantity of powder contained therein, and the year in which the inspection is made.

Duty of inspectors.

SECT. 4. *And be it further enacted*, That no gunpowder within this state shall be considered to be of proof unless one ounce thereof, placed in the chamber of a four and an half inch howitzer, with the howitzer elevated so as to form an angle of forty-five degrees with the horizon, will, upon being fired, throw a twelve pound shot seventy-five yards at the least.

Proof of quality of gunpowder.

SECT. 5. *And be it further enacted*, That whenever any of said inspectors shall discover any gunpowder, deposited at any public powder magazine, or any other place within this state, which is not well manufactured, or which is composed of impure materials, or of any improper proportion of materials, and which shall not be of the proof herein before mentioned, the inspector, in such case, shall mark each cask containing such impure, ill-manufactured, or deficient gun-powder, with the word "*Condemned*," on both heads of the cask, and with the same words on the side thereof, with the christian and surname of the inspector on one head of the cask.

Inspectors to mark bad powder.

SECT. 6. *And be it further enacted*, That if any person shall knowingly sell any condemned gunpowder, or shall fraudulently alter or deface any mark or marks, placed by any inspector upon any cask or casks containing gunpowder, or shall fraudulently put any gunpowder, which shall not have been inspected, or which has been condemned,

Penalty for selling condemned powder.

into any cask or casks, which shall have been marked by any inspector agreeably to the provisions contained in the third section of this act, every such person, so offending, shall forfeit and pay not less than two hundred nor more than five hundred dollars, for each and every offence, to be recovered in an action of debt, in any court of competent jurisdiction, one half thereof to the use of the state, the other to the use of him or them who shall sue and prosecute for the same.

Inspector's
fees and oath
of office.

SECT. 7. *And be it further enacted,* That each inspector who may be appointed by virtue of this act, shall, before he acts as inspector, be sworn to the faithful and impartial discharge of the duties of his office, and each inspector shall be allowed one cent for each pound of gunpowder, by him examined, inspected and proved, whether the same be by him approved or condemned, to be paid by the owner or owners of the gunpowder.

Penalty for
selling unin-
spected pow-
der.

SECT. 8. *And be it further enacted,* That if any manufacturer of gunpowder shall sell or dispose of, or shall cause or permit to be sold or disposed of, or shall export or cause to be exported without the limits of this state, any powder of his manufacture, before the same has been inspected and marked agreeably to the provisions of this act, he shall forfeit and pay the sum of fifty cents for every pound of powder so sold, disposed of, or exported, to be recovered in the manner provided in the sixth section of this act.

Penalty for
selling pow-
der made of
impure mate-
rials.

SECT. 9. *And be it further enacted,* That if any person within this state, after the first day of January next, shall knowingly sell, expose or offer for sale, within this state, any gunpowder which is not well manufactured, or which is composed of impure materials, and which shall not be of the proof herein before required, shall forfeit and pay not less than five dollars nor more than fifty dollars for each and every offence, to be recovered in the manner provided in the sixth section of this act.

Approved June 21, 1820.

CHAPTER III.

Passed July
6, 1827.

AN ACT to regulate the keeping and selling and transporting of gunpowder.

Penalty for
keeping more
than a quar-
ter cask.

SECT. 1. **B**E it enacted by the senate and house of representatives, in general court convened, That there shall not at any time be kept in any warehouse, store, shop or other building in the compact part of any town or village in this state, a quantity of gunpowder, greater than one quarter cask or twenty-five pounds; and any person or persons

Gunpowder.

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so keeping a greater quantity, shall forfeit and pay for every day during which such greater quantity shall be kept as aforesaid, a sum not exceeding five dollars nor less than one dollar, to be sued for and recovered by the firewards or selectmen in an action of debt, in the name of the town, before any justice of the peace or court proper to try the same, with costs of suit; and the whole of said forfeiture so recovered shall be for the use of the town, to be expended by the firewards or selectmen in purchasing materials necessary and proper to be used for the extinguishing of fires.

SECT. 2. *And be it further enacted*, That the firewards, or a major part of them, or the selectmen of any town, are hereby authorized and empowered to search any warehouse, store, shop, or other building in the compact part of any town, or village in this state, where they have cause to suspect that gunpowder, in a greater quantity than one quarter cask, or twenty-five pounds, may be kept or stored, and in case of finding any gun-powder, kept as aforesaid, in a quantity greater than one quarter cask, or twenty-five pounds, the said firewards or selectmen, are hereby authorized and empowered to seize the same, and the said gunpowder so kept, and stored, contrary to the provisions of this act, shall be forfeited to the town, and the firewards or selectmen, so finding and seizing the same, shall sell said gunpowder at auction, and the avails thereof, to be expended for the purposes aforesaid.

Firewards or selectmen may search for, seize and sell any greater quantity.

SECT. 3. *And be it further enacted*, That every person keeping gunpowder to sell by retail, in any quantity less than one quarter cask, or twenty-five pounds, and who shall not at all times, keep the same in a tin cannister, or cannisters, or other incombustible vessel, or vessels, covered and secured from fire, or if said gunpowder be kept in a wooden cask, or casks, said cask, or casks, shall be enveloped in substantial and close leathern bags, or sacks, shall forfeit and pay for each and every day he, she, or they, shall so keep it, a sum not exceeding five dollars, nor less than one dollar, to be sued for, and recovered in the manner and for the purposes aforesaid.

Manner of keeping less than a quarter cask to sell by retail.

SECT. 4. *And be it further enacted*, That gunpowder shall not be transported, or carried through the compact part of any town or village, in any cart, wagon, or other open carriage, in a quantity greater than four quarter casks, or one hundred pounds at any one time, nor unless the casks containing the gunpowder so transported, be enveloped in substantial leathern bags, or sacks, and any person or persons transporting gunpowder, as aforesaid, in a greater quantity, and without being enveloped, as aforesaid, except the same be conveyed in a closely covered carriage, shall forfeit and pay a sum, not more than fifty dollars, nor less than fifteen dollars, to be sued for and recovered

Transporting gunpowder through the compact part of any town.

No carriage
with more
than one
quarter cask
to stand in
such compact
part.

in the manner and for the purposes aforesaid. And no cart, wagon, or other carriage, shall be permitted to stand in any shed, barn, or other building, or near any store, dwelling-house, or other building in the compact part of any town, or village, upon which there may be a greater quantity than one quarter cask, or twenty-five pounds of gunpowder, and in case any gunpowder shall be found upon any cart, wagon or other carriage, contrary to the provisions of this act, any fireward or selectman of the town where found, may seize the same and cause it to be sold as gunpowder, that may be found contrary to the provisions of this act.

Carrying
from town to
town to re-
tail.

SECT. 5. *And be it further enacted*, That no person shall at any time transport or carry from town to town, or from place to place, any gunpowder for the purpose of peddling or selling it by retail in quantities less than twenty-five pounds, on penalty, that the owner, or owners, or person, or persons selling, or offering it for sale, shall forfeit and pay for every offence, a sum not more than five dollars, nor less than one dollar, to be sued for and recovered in the manner and for the purposes aforesaid.

Penalty for
retailing in
any highway
or on any pa-
rade, com-
mon, &c.

SECT. 6. *And be it further enacted*, That if any person or persons, shall sell, or offer for sale by retail, any gunpowder in any highway, or in any street, lane, or alley, or on any wharf, or parade, or common, such person or persons, so offending, shall forfeit and pay for each and every such offence a sum not more than five dollars, nor less than one dollar, to be sued for, and recovered, and for the purposes aforesaid.

Penalty for
selling in
night time.

SECT. 7. *And be it further enacted*, That if any person or persons shall within this state in the night time between sunsetting and sunrising sell or offer to sell by retail, or deal out any gunpowder, such person so offending shall forfeit and pay for each and every such offence a sum not more than five dollars nor less than one dollar, to be recovered and applied as aforesaid.

Limitation.

SECT. 8. *And be it further enacted*, That all prosecutions against [under] this act shall be commenced within three months after the offence shall have been committed and not afterwards.

Act 1825 re-
pealed.

SECT. 9. *And be it further enacted*, That an act passed July 2d, 1825, entitled "an act to regulate the keeping and selling and transporting gunpowder," be and the same is hereby repealed. *Provided*, That nothing herein contained shall affect any rights acquired, or liabilities incurred under said act.

Approved July 6, 1827.

Powder.

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and Chattel as shall be found in any Corn-field or other inclosure.

And whosoever Impounds any Swine or Chattel, shall give present notice to the Owner if he be known, or otherwise they shall be cryed at the two next Lectures or Markets; And if Swine or Chattel escape out of Pound, the Owner if known, shall pay all damages according to Law. *A. 57. p. 24.*

And every person or persons having notice given them, or otherwise left in writing at their House or place of their usual abode, of any of their Chattel Impounded or otherways Restrained, shall forthwith give satisfaction to the party so wronged, or otherwise Replevie their Chattel, and prosecute the same according to Law, upon peril of suffering all the loss and damage that shall come to their Chattel by standing in the Pound or other lawful place of Restraint. *[1645, 47, 57.]* *Cattle impounded to be replevied or damage satisfied*

2. And if any person shall resist or rescue any Chattel going to Pound, or shall by any way or means convey them out of Pound or other Custody of the Law, whereby the party wronged may lose his damages, and the Law be deluded, that in case of meer rescues, the party so offending shall forfeit to the Treasury *forty shillings.* *Rescues and Pound breach*

And in case of Pound breach *five pounds*, and shall also pay all damages to the party wronged, and if in the rescues any bodily harm be done to the person of any Man or other Creature, they may have remedy against the Rescuers; And if either be done by any not of ability to answer the forfeiture and damages aforesaid, they shall be openly Whipped by Warrant from any Magistrate before whom the offender is convicted in the Town or Plantation where the offence was committed, not exceeding *twenty stripes* for the meer Rescue or Pound breach; And for all damages to the party, they shall satisfy by service, as in case of Theft. *Fine or*

And if it appear there were any procurement of the Owner of the Chattel thereunto, and that they were Abettors therein, they shall pay forfeiture and damages as if themselves had done it. *[1647.]* *be whipped*

P O W D E R.

VV Hereas by favour of the Government in England, several quantities of Powder and other Amunition are yearly Imported into this Jurisdiction for our necessary use and defence; To the end the favour we receive may not be Abused, nor our selves Deprived of the just and necessary use thereof; *A. 52. p. 3.*

It is hereby Ordered and Enacted; That all Merchants or others, that shall import into this Jurisdiction either Powder, Lead, Bullets Shot, or any Amunition whatsoever, shall give particular notice of the quantity thereof to the Publick Notary, upon the pain and penalty of *forty pounds*, within one Month after the Landing of such Goods, who is hereby enjoined to take particular notice of the same, with the Mark and Number, and faithfully to enter the same in a Book, and the Names of the Persons to whom they are sold, or into whose Custody or *Powder imported to be Enterd with the publick Notary*

F f

power

power they are committed, that he may give account thereof upon Oath to the Governour, Deputy Governour or any of the Council from time to time; And the said Notary is hereby prohibited, upon the penalty of *one hundred pounds*, to grant Certificate to any Merchant or other of any such Goods but such as he shall have particular notice of, and entred as aforesaid.

And to the end this Order may be duly observed, and that no person may plead ignorance thereof;

It is hereby Ordered, That the Captain of the Castle shall upon the arrival of any Ship or Vessel in the Massachusetts Bay, from any forraign parts, give notice of the contents of this Order, to the Master or Merchant of any such Vessels, and the Constables of all other Port-Towns in this Jurisdiction, are hereby required to do the same. [1651.]

L. 1. p. 45. 2. And it is further Ordered; That no person (except for the defence of themselves and their Vessels at Sea) shall transport any Gunpowder out of this Jurisdiction, without license first obtained from some two of the Magistrates, upon penalty of forfeiting all such Powder as shall be transporting or transported, or the value thereof.

And that there may be no defect for want of an Officer to take care herein;

Searchers for powder exporting

This Court, the Court of Assistants, or any Shire Court, shall appoint meet persons, from time to time in all needful places, who have hereby power granted them, to search all Persons and Vessels that are or any way shall be suspicious to them to be breakers of this Order, and what they finde in any Vessel or Hands, without license as aforesaid, to seize the same, and to keep the one half to their own use in recompence of their pains, and to deliver the other half forthwith to the Treasurer. [1645, 51.]

Prescriptions.

IT is Ordered, Decreed, and by this Court Declared; That no Custome or Prescription shall ever prevail amongst us in any Moral case, (our meaning is) to maintain any thing that can be proved to be Morally sinful by the Word of God. [1641.]

Prisoners, Prison, House of Correction.

Prisoners carried at their own charge

IT is Ordered; That such Malefactors as are committed to any common Prison, shall be conveyed thither at their own charge if they be able, otherwise at the charge of the Country. [1646.]

[2. For

And it is further provided, That the provisions of this act shall not extend to include or affect the 24th regiment of militia in this Colony.

[526] *An Act for encouraging the Manufactures of Salt Petre and Gun Powder.*

Be it enacted by the Governor, Council and Representatives, in General Court assembled, and by the authority of the same, That there shall be given and paid out of the Colony treasury a premium or bounty of ten pounds for every hundred pounds weight of good and merchantable salt petre or nitre that shall be made and manufactured in this Colony between the first day of June 1776 and the first day of January 1777, and so in proportion for a greater or lesser quantity: Always provided, That in case any proprietor of salt petre works or manufacturer of salt petre shall, upon application and request made to him by any person or persons, neglect or refuse to communicate a full account of the materials out of which and the process by which such salt petre or nitre is made, such proprietor or manufacturer shall not be entitled to have or receive the aforesaid bounty or premium for any salt petre or nitre he shall make; anything herein contained notwithstanding.

Be it further enacted, That a suitable number of inspectors of salt petre or nitre be appointed by the General Assembly, and that the claimants of the premium or bounty given by this or any former act for the manufacture of salt petre or nitre shall procure the salt petre or nitre by them made to be inspected by one or more of said inspectors, and shall also make oath before such inspector, which oath such inspector is hereby enabled to administer, that such salt petre or nitre was made and manufactured in this Colony out of materials collected therein by him or them, or for his or their account, and that no other certificate hath been had or given for the same; and thereupon said inspector shall give to the claimant or claimants a certificate of the quantity and quality of such salt petre or nitre, and that proof hath been made as aforesaid that the same was manufactured in this Colony by such claimant or claimants; which certificate

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being laid before the Committee of the Pay-Table, they shall draw an order on the Colony Treasurer to pay such claimant or claimants the amount of the aforesaid bounty or premium on such nitre or salt petre out of the Colony treasury and charge the same to the Colony's account, who shall accept and pay such order accordingly.

Be it also enacted, That every town in this Colony, which hath and doth send Representatives to the General Assembly, in which salt petre or nitre works are not or shall not be erected and the manufacture of salt petre is not or shall not be carried on by some private person or persons, shall be and are hereby enjoined as soon as may be to erect one set of such works and carry on the manufacture of nitre or salt petre in the same; and that it shall be the duty of the selectmen of each town in this Colony, and they are hereby authorized and enjoined, at the expence and for the benefit of said town, to cause such works to be erected and said manufacture to be carried on in the same accordingly.

Be it also enacted, That no salt petre, nitre or gun-powder made and manufactured, or that shall be made and manufactured in this Colony, shall be exported out of the same by land or water without the licence of the General Assembly or his Honor the Governor and Committee of Safety, under the penalty of twenty pounds for every hundred weight of such salt petre, nitre or gun-powder, and proportionably for a greater or lesser quantity so without licence exported; to be recovered by bill, plaint or information, in any court of record in this Colony by law proper to take cognizance thereof.

And whereas it is necessary that two powder-mills be immediately erected in this Colony for manufacturing gun-powder,

Be it further enacted by the authority aforesaid, That a bounty or premium of thirty pounds shall be paid out of the Colony treasury to the person or persons who shall erect the first powder-mill in this Colony, and shall make and manufacture therein five hundred pounds weight of good and merchantable gun-powder; also that a bounty or premium

of thirty pounds shall be paid out of the Colony treasury to the person or persons who shall erect the second powder-mill in this Colony and make or manufacture therein five hundred pounds weight of good and merchantable gun-powder.

Be it further enacted, That the inspector or inspectors who shall inspect and give a certificate for any quantity of salt petre, as before directed, shall purchase and receive such salt petre for the Colony's use and benefit, and give his or their receipt therefor to the claimant or claimants, who shall be paid therefor out of the Colony treasury at such price as the General Assembly shall ascertain and affix.

And whereas it is expedient that powder-mills should be so situated as to accommodate the public in the best manner,

Be it further enacted by the authority aforesaid, That no powder-mill shall be erected in this Colony for the manufacture of gun-powder without the licence of the General Assembly, or in their recess of the Governor and Council, first had and obtained, under the penalty of thirty pounds for every such offence, to be recovered as the other foregoing penalties in this act are above directed to be recovered.

An Act for restraining and punishing Persons who are inimical to the Liberties of this and the Rest of the United Colonies, and for directing Proceedings therein

[527] *Be it enacted by the Governor, Council and Representatives, in General Court assembled, and by the authority of the same*, That if any person within this Colony shall directly or indirectly supply the ministerial army or navy with provisions, military or naval stores, or shall give any intelligence to the officers, soldiers or mariners belonging to said army or navy, or shall enlist or procure any others to enlist into the service of said army or navy, or shall take up arms against this or either of the United Colonies, or shall undertake to pilot any of the vessels belonging to said navy, or in any other ways shall aid or assist them, and be thereof duly convicted before the superior court, shall forfeit all his estate, which shall be accordingly seized by order of said court for the use of this Colony; and such person shall be further punished by imprisonment in any of the goals in this Colony